



# UNITED STATES PATENT AND TRADEMARK OFFICE

mf

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/815,829

04/02/2004

Michael D. Wall

22187.00

8875

37833 7590 09/22/2006

LITMAN LAW OFFICES, LTD  
PO BOX 15035  
CRYSTAL CITY STATION  
ARLINGTON, VA 22215

EXAMINER

KENNEDY, JOSHUA T

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/815,829

Applicant(s)

WALL, MICHAEL D.

Examiner

Joshua T. Kennedy

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,8-12 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,8,9,12 and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/23/2006 has been entered.

Claims 1, 5, 8, 9, 12, and 16-18 have been examined.

Claims 2-4, 10,11, and 15 have been cancelled.

Claims 6, 7, 13, and 14 have been withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Nofziger (US Patent 3,170,201).

Art Unit: 3679

As to Claim 1. Nofziger discloses a barrier system for use with pre-existing fence posts comprising:

a plurality of first fence panels (A,L; Examiner considers the combination of A and L to comprise a panel; Fig 13 shows 3 of such panels), each first fence panel having a first end and a second end;

said first end of each first fence panel including an elongated post receiving slot (17) and a pair of substantially identical elongated connector projections (19,20) extending parallel to said post receiving slot (Fig 2);

a plurality of second fence panels, each second fence panel having a first end and a second end (Fig 13);

said first end of each second fence panel including an elongated post receiving slot (17) and a pair of substantially identical elongated connector slots (18,21) extending parallel to said elongated post receiving slot, said pair of connector slots configured for sliding, interlocking engagement with the connector projections of one of said first fence panels (Fig 4);

wherein when said pair of connector projections of a said first fence panel slidably, matingly interlock with said pair of connector slot slots of a said second fence panel an elongated cavity is formed between each the elongated post receiving slot of said first end of said first fence panel and the elongated post receiving slot of said first end of said second fence panel, said elongated cavity being dimensioned and configured to circumscribe an exterior surface of a pre-existing fence post (D; Fig 9);  
and

Art Unit: 3679

said second end of each said first fence panel and said second end of each said second fence panel being designed and configured to be interconnected (Fig 13);

whereby a barrier system is formed by said plurality of first and second fence panels being connected alternately by said first ends and said second ends, respectively, with the elongated cavities formed by the post receiving slots of the connected first ends of said first and second fence panels fitted around pre-existing fence posts (Fig 13).

As to Claim 8. Nofziger discloses a post cap (H) releasably secured to each of said pre-existing fence posts (Col 3, Lines 59-72).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nofziger in view of Infantino (US Patent 4,241,554).

Nofziger discloses a barrier system significantly as claimed but does not disclose each panel being horizontally corrugated, each panel including a plurality of horizontal corrugations.

Infantino teaches a decorative panel system that is connected end to end by corresponding projections and slots wherein each panel (10) includes a plurality of horizontal corrugations (16) "to simulate masonry materials other than brick, such as slump stone, flag stone, tile and the like" (Col 3, Lines 21-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the panel of Nofziger to have horizontal corrugations to simulate masonry materials other than brick, such as slump stone, flag stone, tile and the like. It is noted that a change in ornamental design having no mechanical function is an aesthetic design consideration within the skill of the art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Claims 9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nofziger in view of Cook (US patent 460,177).

As to Claim 9. Nofziger discloses a barrier system for use with pre-existing fence posts comprising:

a plurality of first fence panels, each first fence panel having a first end, a second end and a height (A,L; Examiner considers the combination of A and L to comprise a panel; Fig 13 shows 3 of such panels),;

a plurality of second fence panels, each second fence panel having a first end, a second end and a height, said height of each said second fence panel being substantially equal to said height of each said first fence panel (Fig 13);

a first releasable attachment structure disposed on said first end of each said first fence panel and said first end of each said second fence panel (Fig 2);

said first releasable attachment structure comprising a pair of substantially identical elongated connector projections (19,20);

a second releasable attachment structure disposed on said first end of each said first fence panel and said first end of each said second fence panel (Fig 2);

said second releasable attachment structure comprising a pair of substantially identical elongated connector slots (18,20);

the first and second releasable attachment structures disposed on the first end of each said second fence panel being configured for sliding, interlocking

Art Unit: 3679

engagement with the second and first releasable attachment structures, respectively, disposed on the first end of each said first fence panel (Figs 13 and 14);

said first end of each said first and second fence panels further including an elongated post receiving slot (17) coextensive with the height of said first and second fence panels, respectively;

wherein when said first and second releasable attachment structures of said first end of a first fence panel slidably, matingly interlock with the respective said second and first releasable attachment (Fig 14), structures of said first end of a second fence panel an elongated cavity is formed between the elongated post receiving slot of said first end of said first fence panel and the elongated post receiving slot of said first end of said second fence panel, said elongated cavity being coextensive with said height of said respective first fence panel and second fence panel, said elongated cavity being dimensioned and configured to circumscribe an exterior surface of a pre-existing fence post (D; Fig 13));

a plurality of post caps (H), each post cap being releasably securable to a pre-existing fence post(Col 3, Lines 59-72); and

said second end of each said first fence panel and said second end of each said second fence panel being designed and configured to be interconnected (Fig 14);

whereby a barrier system is formed by said plurality of first and second fence panels being connected alternately by said first ends and said second ends, respectively, with the cavities formed by the post receiving slots of the connected first



Art Unit: 3679

ends of said first and second fence panels fitted around pre-existing fence posts (Fig 13).

Nofziger does not disclose said connector projections said connector slots extending approximately one-half the height of said first fence panel and said second fence panel.

Cook teaches a building block assembly that is connected end to end using dovetailed projections and slots extending approximately one-half the height of the block so that the blocks "are held rigidly in place and prevented from slipping upon each other and may be very rapidly and accurately [assembled]" (Col 2, Lines 53-59). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the panel connection of Nofziger to have an assembly that is connected end to end using dovetailed projections and slots extending approximately one-half the height of the block so that the blocks as taught by Cook so that the panels are held rigidly in place and prevented from slipping upon each other and may be very rapidly and accurately assembled.

Note that it is suggested by the Examiner that Applicant further define the arrangement of the slots and projections; more specifically, explain how the top half of the first panel contains projections, while the bottom half of the first panel contains slots collinear to said first panel projections, etc.

Art Unit: 3679

As to Claim 16. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "each panel is fabricated by molding" has been given only limited patentable weight. See MPEP § 2113.

Claims 17 and 18. Nofziger discloses fasteners for attaching the second end of said first fence panel to a third fence panel and fasteners for attaching the second end of said second fence panel to a fourth fence panel (Col 5, Lines 10-21).

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nofziger in view of Cook as applied to claims 9 and 16-18 above, and further in view of Infantino (US Patent 4,241,554).

Nofziger in view of Cook disclose a barrier system significantly as claimed but do not disclose each panel being horizontally corrugated, each panel including a plurality of horizontal corrugations.

Infantino teaches a decorative panel system that is connected end to end by corresponding projections and slots wherein each panel (10) includes a plurality of horizontal corrugations (16) "to simulate masonry materials other than brick, such as slump stone, flag stone, tile and the like" (Col 3, Lines 21-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the panel of Nofziger in view of Cook to have horizontal corrugations to simulate masonry materials other than brick, such as slump stone, flag stone, tile and the like. It is noted that a change in ornamental design having no mechanical function is an

Art Unit: 3679

aesthetic design consideration within the skill of the art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5,8-12, and 15-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3679

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTK

JTK

9/15/2006



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600